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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Option	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	
	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC"), on behalf of its wireline and wireless subsidiaries,[1] submits these Reply Comments in response to comments on the Commission's *Notice of Inquiry* ("*NOI*") in the above-captioned proceeding. Those comments provide substantial support for SBC's positions, set forth in our Comments, that (1) the Commission lacks authority to mandate the provision of or establish requirements for Calling Party Pays ("CPP") arrangements offered by commercial mobile radio service ("CMRS") providers and (2) the competitive marketplace can and should determine whether or not wider availability of CPP would increase local exchange competition.

[1] SBC's wireline subsidiaries are Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell. SBC's wireless subsidiaries are Southwestern Bell Mobile Systems, Inc., Southwestern Bell Wireless Inc., and Pacific Bell Mobile Services.

I. SUMMARY AND INTRODUCTION

Based on the comments filed in this proceeding, the Commission should not open a rulemaking proceeding concerning CPP. In particular, the Commission should not propose either mandatory CPP or mandatory billing for CPP by local exchange carriers ("LECs").

Various parties explain why the Commission lacks the authority to mandate or establish requirements for CPP arrangements between LECs and CMRS providers. CPP is a billing option that is one of the non-rate "other terms and conditions" of CMRS service that § 332 of the Communications Act does not allow the Commission to regulate. Contrary arguments by some CMRS providers rely on extreme distortions of both the nature of CPP and of the law. In addition, the Commission does not have the authority to order LECs to provide billing and collection services for CPP. As the Commission has recognized, billing and collection is not a communications or common carrier service, and there is no need to require LEC billing and collection because competitive alternatives exist.

The Commission should reject arguments by CMRS providers that request complete marketplace freedom for themselves but strict regulations on the LECs in order to gain unfair advantages for CMRS. Most extreme are the requests by AirTouch, Omnipoint, and Vanguard for the Commission to require LECs to provide billing and collection services for CPP. These requests are contrary to the comments of the CMRS industry, represented by CTIA and PCIA, that acknowledge that LEC billing and collection is not necessary for CPP since the competitive market can provide alternatives. The CMRS providers are able to provide their own billing and collection or

contract with a third party, using billing information that LECs already are willing to provide.

There is broad support in the comments for allowing the marketplace to determine whether wider availability of CPP would benefit consumers by stimulating local competition between wireless and wireline services. That is the correct approach, and it should be applied uniformly to all service providers, CMRS providers and LECs alike. The comments provide additional evidence that, if the Commission does open a rulemaking proceeding for CPP, it should propose that minimum, standardized consumer protections be implemented to ensure that calling parties know they are being charged for each call to CMRS end-users, and the amount of the charges, and to ensure that an affirmative response is received from the calling party before charges begin. The Commission should not create problems for the States to solve. Accordingly, the Commission should not mandate the cause of potential consumer problems – CPP -- without also proposing strict minimum requirements that states can tailor to meet their individual consumer protection concerns. The proper approach, however, is for the Commission to stay clear of CPP and let the competitive market perform.

Finally, the comments provide additional evidence that there has been only limited and selective acceptance of CPP in the United States for market-driven reasons that include (1) calling parties' unwillingness to pay per-minute charges for originating local calls that terminate on wireless networks and (2) technical and practical implementation problems. Moreover, the comments provide additional evidence that the international experience with CPP is not indicative of demand for CPP in the United

States. Unlike in the United States, in countries where CPP is successful, telephone subscribers are accustomed to paying per-minute charges for every call and, in many cases, wireline service is difficult to obtain, making wireless a necessary substitute. Only marketplace competition can properly and efficiently determine if CPP will become popular in the United States in spite of these differences.

II. THE COMMISSION LACKS AUTHORITY TO MANDATE OR REGULATE CPP SERVICE

A. Section 332 Does Not Provide FCC Authority Over CPP

The comments provide assistance in understanding the precise nature of CPP in order to determine how it can, and cannot, be regulated. When Congress established Section 332 of the Communications Act, it encouraged reliance on competition to govern the provision of CMRS, but left regulators with well-defined roles and divided regulatory authority over CMRS between the Commission and the States. Congress provided the Commission with authority to ensure the right of interconnection.[2] In addition, by removing the States' authority over entry and "rates charged by" CMRS providers, Congress provided the Commission with authority over these specific areas.[3] But Congress expressly left the regulation of all "other terms and conditions" of CMRS service with the States.[4] Thus, in order to determine whether the Commission has

[2] Section 332(c)(1)(B).
[3] Section 332(c)(3).
[4] *Id.*

authority to regulate CPP, the precise nature of CPP in relation to CMRS as a whole must be considered.

The Commission considered this issue in the *Arizona Decision* and decided that CPP is a billing practice, which Section 332(c)(3) does not prohibit a State from regulating as "other terms and conditions" of commercial mobile services.[5] Some commenters assert that the Commission was wrong in *Arizona* and should reverse itself here. But the commenters do not provide a rational basis for such a dramatic reversal, in short, because there is none. For instance, CTIA states that regulation of CPP would be regulation of entry and rates, which under § 332(c)(3) of the Act the Commission could regulate.[6] However, CTIA does not show that CPP determines either the ability to enter the CMRS marketplace or the rates charged, as it clearly does not. AT&T argues that the authority over rates charged by CMRS providers includes "the nature and types of charges imposed for CMRS, including the manner in which these charges are collected."[7] But AT&T provides no support for that overbroad interpretation of the word "rates."

PCIA and GTE take an even more extreme position that CPP is equivalent to CMRS as a whole and that the Commission somehow has exclusive authority over it

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[5] *Petition of Arizona Corporation Commission To Extend State Authority Over Rate and Entry Regulation*, PR Docket No. 94-104 and GN Docket No. 93-252, *Report and Order*, 10 FCC Rcd 7824, 7837 (1996) ("*Arizona Decision*").
[6] CTIA at 3, 12, 14, 15.
[7] AT&T at 6.

and should establish a national policy for it.[8] PCIA's argument is flawed for a number of reasons. First, PCIA does not show that CPP determines the entry, interconnection, or rates for CMRS providers. PCIA's analogy to operator service provider ("OSP") services is misplaced. OSPs represent a type of service provider that routes calls and determines specific rates for calls based on the services they offer. CPP does neither. Second, under § 332, the Commission expressly does not have exclusive authority over CMRS. Congress stated that "other terms and conditions" beyond the rates charged by CMRS providers are under state authority.

Other commenters help show the fallacy of attempts by CTIA, PCIA, and others to stretch the nature of CPP to allow FCC regulation of it under § 332.[9] As US West, for instance, explains, CPP does not physically or functionally change the actual provision of CMRS in any way, shape, or form.[10] Whether or not a CMRS provider offers CPP, it provides the same telecommunications service – transporting calls via a wireless network from one point to another. Moreover, the provision of CPP does not affect the physical interconnection between a CMRS provider and a LEC. CPP solely affects which customer is required to pay for the service. That is, the choice of CPP determines which end user of the CMRS provider must be billed to, and collected from, for the same service that the CMRS provider has been able to provide all along. The only thing new is the billing option. Whether or not the CMRS provider decides to offer

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[8] PCIA 3-9. GTE at part IV. Late last year, SBC responded to CTIA's September 23, 1997 letter from CTIA to Chairman Hundt requesting a declaration that the FCC has exclusive authority over CMRS. SBC's response, opposing CTIA's request, is attached hereto as Exhibit A.

[9] See generally, Paging Network at 5; Omnipoint at 2; Sprint Corporation at 1, 2.

[10] US West at 1-3.

the CPP billing option does not determine its ability to enter CMRS markets or to interconnect with other carriers. Nor does a decision to offer CPP determine the "rates charged by" the CMRS provider for service. CPP solely determines which customer pays, not how much the customer pays. Accordingly, the Commission was correct in the *Arizona* decision that CPP is one of the non-rate "other terms and conditions" the regulation of which § 332(c)(3) of the Communications Act expressly reserves to the States.[11]

B. The Eighth Circuit's Opinion Does Not Provide FCC Authority Over CPP

PCIA also fails in its attempt to go beyond the express limits of § 332 by asserting that the "Eighth Circuit bolstered" the Commission's authority over CMRS in *Iowa Utilities Board v. FCC* where it pointed out that the Commission has the authority to issue "rules of special concern to the CMRS providers...."[12] The Court was referring to specific rules of special concern to CTIA and other CMRS providers in that case, not to any and all rules that CMRS providers may claim are of special concern.[13] Obviously, the Eighth Circuit cannot expand the scope or reach of § 332 beyond its operative language.

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[11] If the Commission mandates CPP, which we believe it is without the authority to do, as the market becomes increasingly competitive it becomes more important that all competitors have the same requirement. Moreover, there will be additional technical issues associated with multiple providers handling a single call (*e.g.*, number portability). Mandatory CPP would have to be entirely consistent with number portability.

[12] PCIA at 6-7, citing *Iowa Utilities Board v. FCC.*

[13] *Iowa Utilities Board v. FCC* at n. 21.

As US West explains, the Court did not add to § 332, but applied it.[14] Based on § 332, the Court retained only the Commission's rules establishing general requirements (*e.g.*, the requirement for reciprocal compensation) for transport and termination between LECs and CMRS providers.[15] None of the retained rules have anything to do with rates, terms, or conditions applicable to end-users, and certainly nothing to do with billing and collection, and provide no basis for any assertion of authority to regulate CPP or to order that CPP be provided by, or billed by, any carrier.[16]

C. The FCC Cannot Preempt State Authority Over CPP

CTIA and PCIA also assert that the Commission has the authority to preempt state regulation of CPP. Their preemption analyses are fundamentally flawed. They rely on § 332 for alleged broad preemption authority because the House Report mentioned "uniform rules" and the House Conference report expressed a goal "to establish a Federal regulatory framework to govern the offering of all commercial mobile services."[17]

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[14] US West at 9, n.14.

[15] Several commenters address the issue of the interplay between reciprocal compensation and CPP, where CPP is provided. AirTouch at 4; AT&T at 5; Bay Spring "Rural Telcos" at 3-5; GTE at n. 4; Omnipoint at 2-3; Source One at 4-5; Sprint at 8-10. SBC believes that all issues regarding reciprocal compensation should be addressed pursuant to the process prescribed in the 1996 Act: through voluntary negotiations between interconnecting carriers and, where necessary, arbitration before state commissions. 47 U.S.C. §§ 251 & 252.

[16] As SBC said in its Comments at n. 13, mandating CPP for only one segment of the industry would create a quagmire given the different federal and state regulatory responsibilities under the Act. This is yet another reason not to mandate CPP.

[17] CTIA at 20; PCIA at 7.

As discussed, § 332 itself preempts the States in three specific areas: (1) the requirement to interconnect; (2) entry; and (3) rates charged by CMRS providers. It is wrong to argue that a "general purpose" of § 332, found, not even in the Act but in legislative history, allows the Commission to preempt additional areas of CMRS regulation. That would frustrate Congress's express and specific provision that "other terms and conditions" remain subject to state authority.

Where a provision of a statue is clear, as it is here, legislative history may not be used to interpret the statute. Moreover, even if the general purposes referenced by CTIA and PCIA were in the Act, which they are not, they would not affect regulation of CPP. When sections of a statute are compared, the specific provision governs over the general. In *Louisiana Public Service Com. v. FCC*, the Court stated concerning two sections of the Communications Act that "were we to find the sections to be in conflict, we would be disinclined to favor the provision declaring a general statutory purpose, as opposed to the provision which defines the jurisdictional reach of the agency formed to implement that purpose."[18] Here, CTIA and PCIA are not even relying on statutory provisions for the general purpose, but rather legislative history. Accordingly, the specific provisions of § 332 must govern, and the Commission has no authority over CPP.

[18] Louisiana Public Service Com. v. FCC, 476 US 370 (1986).

III. THE COMMISSION CANNOT REQUIRE LECs TO PROVIDE BILLING AND COLLECTION SERVICES FOR CPP, AND ALTERNATIVES EXIST

A. The FCC Does Not Have The Authority To Order LECs To Provide Billing And Collection Services For CPP[19]

AirTouch agrees with the Commission's *Arizona* decision that under § 332 "regulation of CPP is 'a billing practice that may be regulated by a State as a term or condition under which [CMRS] service is provided.'"[20] Accordingly, AirTouch agrees that § 332 does not provide the Commission with authority to require LECs to offer billing services for CPP.[21]

AirTouch also acknowledges that the Commission detariffed LEC billing and collection services in 1986 in the *Billing Detariffing Order*.[22] In that Order, the Commission found that billing and collection is not a communication service but a financial and administrative service and that, even if it were a communication service, it is not a common carrier service.[23] Therefore, the Commission concluded "that billing and collection services provided by local exchange carriers are not subject to regulation under Title II of the Act."[24]

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[19] Billing information as an unbundled network element under § 251, discussed below, is of course different than billing and collection service.
[20] AirTouch at 28.
[21] *Id.* at 23.
[22] Id. at 18, citing *Detariffing of Billing and Collection Services*, *Report and Order*, 102 FCC 2nd 1150 (1986) ("*Billing Detariffing Order*")..
[23] *Billing Detariffing Order at* paras. 32-33.
[24] Id. at para. 34.

Nonetheless, AirTouch states that the Commission should "intervene and require LECs to perform the billing services necessary to a Calling Party Pays option."[25] AirTouch relies on the Commission's explanation in the *Billing Detariffing Order* that it could, but chose not to, regulate billing and collection for interexchange carriers under Title I ancillary authority.[26] The Commission explained that this authority "requires a record finding that such regulation would be directed at protecting or promoting a statutory purpose."[27] The Commission found that billing and collecting was competitive, that no statutory purpose would be served by continuing to regulate it, and that, in fact, detariffing it would enhance competition.[28]

Nonetheless, AirTouch asserts that requiring LECs to bill for CPP would support statutory purposes and, thus, justify the Commission's exercise of ancillary authority. AirTouch states, "Exercise of the Commission's Title I authority would serve at least three statutory purposes[.]"[29] It identifies those purposes as (1) the goal in the House Report of the Telecommunications act of 1996 to open markets to competition, (2) the purpose in § 151 of the Act to "make communications available 'so far as possible, to all the people of the United States," and (3) the purpose in § 151 of the Act to secure a more effective execution of the policies of the Communications Act by vesting certain authority with the Commission. AirTouch asserts that requiring LECs to bill and collect

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[25] AirTouch at 18.
[26] *Billing Detariffing Order at* paras. 35-38.
[27] AirTouch at 19, citing the *Billing Detariffing Order* at para. 37.
[28] *Billing Detariffing Order* at paras. 37-38.
[29] AirTouch at 19.

for CPP would further these purposes by (1) promoting competition in the local telecommunications market, (2) increasing communications service options for consumers, and (3) avoiding "repetitive and burdensome complaint proceedings and thereby secure a more effective and efficient execution of the policies of the Communications Act."[30] AirTouch does not explain how requiring LEC billing and collection would further the three statutory purposes it identifies or how such a requirement would bring the results it describes.

In any event, in the 1990 Opinion in *People of California v. FCC*, the Ninth Circuit clarified that the Commission had "misconceive[d] the nature of its ancillary authority." The Court stated, "Title I is not an independent source of regulatory authority; rather, it confers on the FCC only such power as is ancillary to the Commission's specific statutory responsibilities."[31] Thus, even if the regulation of CPP billing and collection that AirTouch seeks would further the broad purposes it names, which it would not, that could not justify the Commission's assertion of ancillary authority to regulate CPP billing and collection. AirTouch does not identify any "specific statutory responsibilities" requiring regulation of CPP billing and collection. The first broad purpose AirTouch identifies is not even in the statute; it is part of the legislative history. The second and third broad statutory purposes AirTouch identifies are both in Title I itself. They fail because "Title I is not an independent source of regulatory authority." Title I ancillary

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[30] Id.

[31] *People of the State of California v. FCC*, 905 F. 2d 1217 at n. 35 (Ninth Cir. 1990) (emphasis added).

authority cannot be ancillary to itself; it must be ancillary to "specific statutory responsibilities" established in other titles of the Act.

AirTouch makes a similar error related to preemption. AirTouch states:

> The Commission has jurisdiction to act notwithstanding the fact that the underlying service being billed for may, in some cases, be an intrastate telecommunications service. First, ILEC billing and collection service is a communications service that is 'incidental' to both the LECs local and interstate access services. LEC billing and collection for CPP is therefore, arguably as much an interstate service as it is an intrastate service. Thus, the restriction on federal regulation of intrastate services contained in Section 2(b) and emphasized in the *Iowa Utilities Board* decision does not present a barrier to action.[32]

This statement by AirTouch contains a number of errors. First, it is remarkable that AirTouch says CMRS service "may, in some cases" be intrastate. It is well known that CMRS is primarily a local service, and interconnection arrangements between LECs and CMRS providers are established pursuant to § 251 local interconnection agreements under state authority. Indeed, AirTouch's use of the term "arguably" in the third sentence appears to indicate that even AirTouch does not believe that the traffic is as much interstate as intrastate.

Second, AirTouch's statement that "billing and collection service is a communications service" is in conflict with the Commission's 1996 finding that billing and collection is an administrative service as opposed to being a "telecommunications-

[32] AirTouch at 22 (emphasis added).

related" service.[33] Moreover, as even AirTouch is forced to admit, the Commission has consistently held "that billing and collection services are not subject to common carrier regulation."[34]

Third, AirTouch's statement here concerning Section 2(b) is wrong, as is its statement later in its comments that, "[s]ince Section 2(b)'s prohibition on federal regulation of intrastate services is not implicated in this situation, the Commission may preempt state actions inconsistent with federal actions undertaken pursuant to Title I's ancillary jurisdiction."[35] If the Commission had ancillary authority to regulate billing and collection for CPP, as AirTouch incorrectly says it does, then the § 2(b) reservation of authority over intrastate service to the states would apply to CPP.[36]

In *California v. FCC*, the Ninth Circuit rejected this type of attempt to use Title I to evade § 2(b):

> We are unpersuaded. There is nothing in the language of the Act to suggest that the "dual regulatory system[,]" Louisiana PSC, 476 U.S., 476 U.S. at 370 (emphasis omitted), established by Congress contains an exception for Title I regulation. Section 2(b)(1) is phrased in broad terms that sweep beyond Title II. To accept the Commission's proposed circumscription of § 2(b)(1) would be to do violence to the language of the Act.
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[33] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket 96-149, *Notice of Proposed Rulemaking ("NPRM")*, 11 FCC Rcd 18877 (1996) ("*Non-Accounting Safeguards NPRM*"), *First Report and Order*, 11 FCC Rcd 21905 at para. 217 (1996) ("*Non-Accounting Safeguards Order*").

[34] AirTouch at n. 37.

[35] Id. at 24.

[36] The Eighth Circuit's Interconnection Opinion, *Iowa Utilities Board v. FCC*, does not affect this Title I and § 2(b) analysis.

> The FCC's position, then, reduces to the anomalous proposition that § 2(b)(1) strictly limits the Commission's explicitly granted Title II powers, but imposes no restriction at all on the implied authority derived from those powers. We cannot agree. The system of dual regulation established by Congress cannot be evaded by the talismanic invocation of the commission's Title I authority.[37]

Accordingly, AirTouch's attempt to use Title I to evade state authority must be rejected.

For all the above reasons, AirTouch's legal argument concerning LEC billing and collection fails and, in fact, shows that the Commission does not have any authority to require LECs to bill and collect for CPP.

B. There Is No Need To Require LECs To Bill And Collect For CPP Since Competitive Alternatives Exist

AirTouch states that "where LECs refuse to bill and collect CPP charges from their subscribers, CPP cannot be introduced."[38] AirTouch does not deny that CMRS providers can do their own billing and collection or contract with third parties. Instead, AirTouch complains of economic disadvantages. AirTouch states, "Including CPP charges on the LEC's bill with charges for other services creates a much lower risk of uncollectibles."[39] AirTouch does not explain this belief, but apparently believes that consumers will think that the CMRS charges are part of their local service which will be cut off if they do not pay it. This is incorrect and is not a justification that is deserving of regulatory approval. AirTouch also argues that it should be able to take advantage of the LECs' economies of scale rather than be required to build its own.[40] Billing and

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[37] *California v. FCC* at n. 35.
[38] AirTouch at 18.
[39] Id.
[40] Id. at 17-18.

collection is competitive, and there is no justification to provide this advantage to CMRS providers. Clearinghouses, credit card companies, and other third parties have economies of scale in billing and collection, and those CMRS providers not wishing to provide their own services may contract with these parties.

Other commenters acknowledge the existence of alternatives to LEC billing and collection.[41] AT&T Wireless not only does not recommend requirements for LEC billing and collection but questions whether any direct relationship between LECs and CMRS providers, including relationships under which LECs provide billing information, are needed.[42] Sprint Corporation points out that the CMRS provider need not utilize the LECs' billing and collection services.[43] PCIA explains that nationwide standards can be negotiated for sharing information for billing without Commission action.[44] CTIA states that "CMRS carriers that wish to deploy CPP should themselves be responsible for taking the necessary steps to support the service"[45] and that "the network elements needed to provide CPP are generally available from incumbent LECs through existing regulatory requirements.[46] Those network elements include the information sufficient

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[41] The question of whether a CMRS provider can efficiently and cost effectively offer CPP is not the relevant issue. LECs should not be required to perform billing and collection service for CPP simply because they may be able to do so more efficiently than a third party. The decision by a CMRS provider to incur additional costs to offer CPP is a market-based decision. The CMRS carrier must weigh the added costs of providing the service with the anticipated customer demand. If the customer demand is not sufficient, the provider will not elect to provide the service.

[42] AT&T Wireless at 2-3.

[43] Sprint Corp. At 2.

[44] PCIA at 13.

[45] CTIA at 8.

[46] Id. at n. 3.

for billing.[47] AirTouch itself states that SS7 for a "more efficient exchange of billing information" is being developed for both CMRS and LEC networks and that "carriers can work out suitable arrangements for exchanging billing information without regulatory intervention."[48] Similarly, Bell Atlantic points out that CMRS providers may obtain billing name and address information from LECs.[49]

GTE takes Bell Atlantic's approach a step further by indicating that by using Advanced Intelligent Network a CMRS provider can obtain all the information necessary to handle a CPP call: it can look up the called number and decide if the called party subscribes to CPP, it can recognize if a calling party number is available, and it can offer billing options to the calling party, including the option not to process the call.[50] A benefit of this approach is that the CMRS provider can either purchase intelligent network capability from a third party vendor, such as a LEC, CLEC, IXC or an ESP, or it can enhance its own network to provide intelligent network functionality. Using AIN, the CMRS provider can establish CPP for airtime only or it can include toll and roaming charges as well.[51] Thus, obtaining necessary information to offer CPP is not a barrier.[52]

AirTouch attempts to prevent LECs from making the business decision of whether or not to bill and collect for CPP by asserting that declining to do so is anticompetitive. AirTouch quotes from a letter from David Kerr of Southwestern Bell Telephone Company ("SWBT") stating that "our ability to market additional products

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[47] 47 U.S.C. § 151(29).
[48] AirTouch at 27.
[49] Bell Atlantic at 9.
[50] GTE at 4.
[51] Id.
[52] Id. at 22.

and services would be negatively impacted if we were to bill CPP on Pacific Bell's telephone bill."[53] AirTouch concludes from this that "SBC plainly does not want CPP to develop because it would inhibit Pacific Bell's ability to compete with other local carriers."[54] This is a meritless distortion of the quoted letter, which only asserted that Pacific Bell has no current interest in increasing its customers' aggregate bill with charges made by another carrier. The business decision not to bill for CPP is not related to any desire to either harm or help CMRS providers or the development of CPP; the marketplace will determine CPP's success or failure.

AirTouch's assertion that Pacific Bell apparently is opposed to customers spending more on calls to CMRS customers is similarly nonsensical. The customers will determine for themselves how much they spend on telecommunications. As explained in our comments, Pacific Bell's concern, among others, is that placing CPP charges on its local telephone bills is likely to confuse Pacific Bell's customers into thinking that they are purchasing more service from Pacific Bell than they really are, and cause them to cut back on telecommunications services actually purchased from Pacific Bell in order to be able to afford to pay their bills. That confusion could benefit AirTouch, as revealed by its belief that, if Pacific Bell does the billing and collection, AirTouch will reduce its uncollectibles.[55] No LEC should be required to subject its customers to such confusion, and itself to the resulting business losses, to advantage

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[53] AirTouch at 21.
[54] Id.
[55] See id. at 17.

another company – especially an admitted competitor who is seeking to trade on the reputation and name of the LEC. AirTouch should stand on its own feet.

AirTouch points out that Pacific Bell has filed a tariff with the California PUC that provides billing and collection for telecommunications related services, including end users' wireless services.[56] AirTouch states that Pacific Bell "somehow claims that the tariff somehow does not encompass land line calls made to cellular numbers."[57]

As David Kerr of SWBT stated in the letter cited by AirTouch, "CPP was never contemplated as an option when the tariff was approved."[58] In fact, it was not contemplated by Pacific Bell, other parties, or the California PUC, as evidenced by the fact that, when the tariff was approved, the California PUC did not allow CPP and only more recently approved an AirTouch CPP trial with voluntary participation by LECs.[59]

CMRS providers can request access to billing information in negotiated agreements with Pacific Bell and other LECs, as unbundled network elements under Section 251 of the Act. Accordingly, mandatory LEC billing and collection for CPP is not needed.

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[56] Id. at 24-25.
[57] Id. at 25.
[58] Id. at 24 and Appendix C thereto.
[59] *Investigation on the Commission's Own Motion into the Regulation of Cellular Radiotelephone Utilities*, California PUC, I.88-11-040, *Decision 97-06-109*, June 25, 1997, at p. 7 ("*California PUC AirTouch CPP Market Trial Decision*").

IV. THE MARKETPLACE SHOULD DETERMINE WHETHER WIDER AVAILABILITY OF CALLING PARTY PAYS WOULD STIMULATE LOCAL COMPETITION BETWEEN WIRELESS AND WIRELINE SERVICES

Relying on the market to determine whether wider availability of CPP is warranted is supported in comments filed by a majority of parties. A sample of these comments include:

- Given the competitive market conditions in the CMRS industry, there is no reason for the Commission to mandate CPP or a particular means of implementing CPP arrangements (AT&T Wireless Services at 3)

- The Commission should refrain from issuing detailed regulations governing the provision of CPP service or from requiring wireless carriers to offer CPP (Motorola at 18)

- Cellular, PCS and other wireless carriers will offer and price CPP in response to market demand (Bell Atlantic at 7)

- Market forces, not Commission directives, should continue to determine the ultimate development of CPP services (CTIA at 6)

- The marketplace, not the Commission, should dictate when, where and whether CPP is implemented (Sprint Corporation at 2)

- the marketplace, not the Commission, should determine whether CMRS providers offer CPP (GTE at 9)

The Commission should not ignore these views of diverse commenters and should not regulate or mandate a CPP option.

In the name of marketplace competition, some parties urge the Commission to place no requirements on CMRS providers, but at the same time urge the Commission to place strict requirements on LECs.[60] This is a request not for competition, but for protectionism and more regulation, and must be rejected. Further, some parties urge

[60] *E.g.*, AirTouch at ii and iii of its summary.

the Commission to allow marketplace competition with voluntary participation, but at the same time seek a Commission sponsored national policy supporting the development of CPP.[61] These concepts too are in conflict with each other. In order to work, the marketplace must be as unfettered by regulatory mandates as possible.

Additionally, adoption of mandatory nationwide standards ignores the unique market conditions that exist in each of the states. While CPP may be acceptable in states where measured local service is widely available, it is unlikely to be popular in those states where customers have little or no experience in paying charges for initiating local phone calls.[62] The FCC should be sensitive to the unique situations that exist in the states and not adopt mandatory nationwide standards that only make sense in a few states.

The FCC should not develop any form of mandatory national standards to promote CPP, but should rely on market demand as the sole means of promotion for this service option. If sufficient customer demand exists for CPP, the industry will find a way to most efficiently offer it. If demand does not materialize, carriers will not offer the option and resources will not be wasted on what consumers do not want. Artificial

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[61] PCIA at 10; Motorola at 3.

[62] Washington Utilities and Transportation Commission at 3. Or, as BellSouth indicates (at 4), a cause for a lack of domestic demand may be that some subscribers prefer the CMRS model whereby the party receiving the call pays.

manipulation of the market through regulatory mandate is inefficient and should be avoided.[63]

If the FCC believes it must develop rules pertaining to CPP, such rules should focus on minimum consumer protections. As CTIA points out, the government's role should be limited to that of quickly adopting the least burdensome rules to ensure proper customer notification[64] and should be the responsibility of the CMRS provider offering CPP.[65] Moreover, the notification must require the calling party to provide affirmative consent before charges are incurred. Mandatory deployment of CPP, without these safeguards, would risk substantial harm to the consumer.

V. U.S. MARKET ACCEPTANCE OF CPP HAS BEEN LIMITED AND SELECTIVE

AirTouch asserts that empirical evidence shows that customers desire a CPP option, but AirTouch provides conclusory statements, not empirical evidence. Based on the record, insufficient empirical evidence exists for the Commission to conclude that CPP is likely to be create significant marketplace demand in the United States. BellSouth indicates that its own domestic experience with CPP has reflected a lack of consumer interest and a lack of economic value.[66] GTE indicates that its CPP service

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[63] SBC concurs with the comments of Paging Network, Inc, (at 5) that achieving a "balance of traffic" is not, in and of itself, a meaningful objective for regulators or for the wireless industry. The market and technology evolution will determine the appropriate balance of traffic. The Commission should also be mindful of assertions that CMRS operators have little incentive to offer CPP since the per-call margins on CPP are lower than for conventional mobile party pays. (*See* Omnipoint at 18)

[64] CTIA at 6.

[65] Id at 8 & n. 17.

[66] BellSouth at 3.

offering in Hawaii has not been particularly successful for a variety of reasons. Accordingly, GTE concludes that it does not have enough data to determine what affect, if any, CPP might have on traffic flows, subscribership, digital service, and other factors.[67] CMRS carriers provide even less data concerning the use of CPP in the United States. The record shows that the inability to bill many calls under CPP because of "leakage" is one of the reasons for the slow U.S. development of CPP.[68]

The international experience with CPP is not indicative of demand for CPP in the United States. Although Nokia states that it has been its experience in Europe that CPP increases the demand for wireless services,[69] that experience is not good evidence of what to expect in the United States because of rate structure and other differences between the countries' telecommunications industries.

As indicated by Paging Network, wireless developed as a necessary substitute for inferior wireline services in many countries and, thus, of necessity has been used for both making and receiving calls. The simultaneous health of both wireline and wireless services has allowed consumers in the United States both the convenience of wireline for a majority of incoming calls and the convenience of wireless when away from their offices and homes for outgoing calls.[70]

BellSouth also recognizes that differences in domestic and international market structures likely has created positive market effects overseas that may not be replicated

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[67] GTE at 9.
[68] ATC at 25; PCIA at 13; US West at 2.
[69] Nokia at 2.
[70] Paging Network at 6-7.